



CHIEF OF NAVAL OPERATIONS - N45

Natural Resource Injury, Trustees, and Damages

FACT SHEET

July 2001

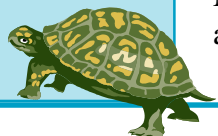
The injury to natural resources that a past release of a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substance and/or an environmental cleanup action may cause is an issue of concern within the Department of the Navy (DON) installation restoration program. The Chief of Naval Operations Environmental Cleanup Division is issuing this fact sheet to help define natural resources injury (NRI) and natural resources damages (NRD). This fact sheet:

- Clarifies the difference between NRI and NRD;

EXAMPLE OF AN NRI

During the investigation of a construction debris landfill site, a cleanup contractor discovers that a population of spotted turtles have made the landfill site their home (habitat). In order to remediate the landfill site, the spotted turtle's home would be destroyed.

In this case, the injury to the natural resource (NRI) would be the destruction of the habitat.



Natural resources are land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, state/local government or Federally recognized Indian tribe.
— 40 CFR 300.5



- Explains who the trustees of the natural resources are;
- Explains DON's position on damages; and
- Describes which processes may determine and address NRI.

What are Natural Resources?

Natural resources are forests, fresh water, or wildlife habitat that occur in nature and have economic value. Natural resources include aquatic life, wildlife, and their habitat; the air we breathe, our drinking water supplies; and native vegetation.

What is NRI?

NRI is the actual harm or injury to a natural resource caused by a

release of a hazardous substance or past practices. The aspects of an injury could be determined during the site's ecological risk assessment (ERA). (See the glossary for a description of ERA.)

How Does DON Determine NRI?

DON focuses on determining if there is an injury to the natural resource, but not on damages.

NRI means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to the release of a CERCLA hazardous substance.
— 43 CFR Part 11.14(v)

During the ERA, DON investigates the likelihood that a release of a CERCLA hazardous substance has injured a natural resource. It is during the ERA that DON enters into discussions with stakeholders, including natural resource trustees other than DON, to determine how to best assess the site. At the conclusion of these discussions, the ERA may assist in identifying whether the natural resource in question has been injured.

DON Promotes Smart Stewardship of Cleanup Alternatives

DON recognizes that choosing the appropriate cleanup technology alternative(s) is key to reducing residual harm to natural resources during the cleanup process. DON Project Managers carefully review

Natural Resource Damages is the amount of money sought by the natural resource trustee as compensation for injury, destruction, or loss of natural resources as set forth in section 107(a) or 111(b) of CERCLA.

— 43 CFR Part 11.14(l)

all viable cleanup technology alternatives before making a selection. They determine which cleanup technology alternative best addresses protection of human health and the environment according to the nine evaluation criteria set out in the National Contingency Plan (NCP). At the same time they consider the potential impact that implementing the selected cleanup technology may potentially have on

the nearby natural resources. DON selects the cleanup technology alternatives, whenever practicable, that will result in the least amount of residual NRI.

Does DON Address NRI During Cleanup Process?

DON, to the extent practicable, will select a response alternative that best addresses the NRI(s) caused by past practices. DON will try to avoid additional destruction or injury to a natural resource while cleaning up a site. If DON is unable to restore the impacted natural resource, the natural resource trustee(s), other than DON, may want to follow the Natural Resource Damage Assessment (NRDA) process prescribed by Department of the Interior and the Department of Commerce.

NRI vs. NRD

NRI	NRD
The harm or injury done to a natural resource resulting from the release of a hazardous substance or past DON practices	Monetary compensation sought by a natural resource trustee for injury to natural resources
Involves the determination of what natural resource was injured and to what extent it was injured	Involves a claim against the U.S. government typically paid by the DOJ judgement fund to restore natural resources at or near the site
May be determined during the ERA	Determined during the NRDA
Can be potentially addressed during remedy selection	Damage claim can address both interim injury and residual injury

What is NRD?

When a natural resource has been injured, the trustee(s) of the natural resource can seek damages for the injury to or loss of the use of the natural resource. Damages are the monetary value assessed for injury. NRD can only be recovered by the natural resource trustee(s), and must be obtained using the legal system. Once damages have been awarded, NRD can only be used by the trustee(s) to restore, replace, or acquire the equivalent of the natural resources that were injured by the release of a CERCLA hazardous substance

near or at the site. For the purposes of DON, NRD is a claim against the U.S. Government for natural resources injured by the DON. An NRD claim can only be filed after the response action (final environmental cleanup action) has been completed (CERCLA Section 113 (g)(1)). NRD claims are typically paid by the Department of Justice (DOJ) Judgment Fund. No claims will be paid using DON environmental restoration cleanup funds.



The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources.

— CERCLA Section 107

What are Natural Resource Trustees?

Natural resource trustees are organizations responsible for protecting natural resources, usually natural resource and land

managers. Trustees are Federal officials as designated by the President of the United States; state officials as designated by the governor of the state; and Indian officials as designated by the governing body of any Indian tribe. Whenever necessary, Federal, state, and Indian tribes may act as co-trustees for the same resource. Most important, natural resource trustees are the only entity(ies) authorized to obtain damages (monetary compensation) from the party responsible for the injury.

What is a Natural Resource Damage Assessment?

Natural Resource Damage Assessment (NRDA) is the process by which the natural resource trustee(s) determine (after the

NRDA is the process of collecting, compiling, and analyzing information or data through prescribe methodologies to determine damages for injuries to natural resources.

— 43 CFR Part 11

cleanup technology has been selected) whether the release of a CERCLA hazardous substance has resulted in NRI. DON does not conduct NRDA at CERCLA sites. The NRDA quantifies the level of injury to and the resultant loss of the use of services (NRI), and assesses monetary value (NRD). This assessed value is referred to as damages. After damages (money) have been awarded by the courts, the Trustee can only use the damages to restore, replace, or acquire the equivalent of the injured natural resource (CERCLA, Section 107(f)(1)).



REFERENCES

- Department of Defense Interim Policy on Integration of Natural Resource Injury Responsibilities and Environmental Restoration Activities, May 2000
- 40 CFR Part 300.600
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Title I, Sections 101, 105, 107, 113
- 43 CFR Part 11.14
- DoD Instruction 4715.7 (“Environmental Restoration Program”), Delegation of CERCLA natural resource trustee authority to the Component heads

FOR FURTHER INFORMATION

For more information about the information contained in this factsheet, contact:

- Office of the Chief of Naval Operations (N45): (703) 604-5420
- Department of the Navy Environmental Program website: <http://web.dandp.com/enviroweb/cleanup/index.html>
- DOI website: <http://www.doi.gov/oepc/response/a03.htm>



GLOSSARY OF TERMS AND ACRONYMS

Biota: All the plant and animal life of a particular region.

CERCLA: The Comprehensive Environmental Response, Compensation, and Liability Act is law that provides guidelines for deciding compensation and responsibility for environmental incidents; gives instructions for cleaning up those incidents; and requires that emergency response plans be developed for future incidents. The basic premise of CERCLA is protection of human health and the environment.

CERCLA Hazardous Substance: Any pollutant or contaminant that threatens human health and the environment, except petroleum or natural gas.

CFR: Code of Federal Regulations.

Cleanup Technology Alternative: A technology or process used to remediate or cleanup a contaminated site. Also referred to as remedial alternative.

DOJ Judgment Fund: Department of Justice Judgment Fund used to pay claims against the U.S. government.

ERA: Ecological Risk Assessment, a process used to determine the likelihood of risk to the environment (ecosystem).

Groundwater: Water flowing (sometimes very slowly) beneath the earth's surface. Groundwater often supplies wells and springs.

Interim Injury: Economic loss for the time period up until restoration is complete.

NCP: The National Contingency Plan (formally known as the National Oil and Hazardous Substances Pollution Contingency Plan) to provide instructions for preparing for and responding to environmental incidents such as the release of harmful substances into the environment.

Remediation: Cleanup or abatement methods (including evaluation, repair, enclosure, or encapsulation) used to remove or contain a toxic spill or hazardous materials from a site.

Residual Injury: Economic loss for that not addressed by the remedy.